

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

TOMAHAWK MANUFACTURING, INC.,  
et al.,

Case No. 2:23-cv-01007-APG-NJK

**Plaintiff(s),**

V.

**ORDER**  
[Docket Nos. 248, 249]

SUPERICAL INDUSTRIES, INC., et al.,  
Defendant(s).

Defendant(s).

Pending before the Court is Plaintiffs' motion to amend. Docket No. 248; *see also* Docket No. 249 (sealed version). Defendants filed a response. Docket No. 263. Plaintiffs filed a reply. Docket No. 269. The Court does not require a hearing. *See* Local Rule 78-1. For the reasons discussed below, the motion to amend is **GRANTED**.<sup>1</sup>

17 Requests for leave to amend the pleadings filed on or before the amendment deadline are  
18 governed by Rule 15 of the Federal Rules of Civil Procedure. Rule 15(a) provides that “[t]he court  
19 should freely give leave [to amend] when justice so requires,” and there is a strong public policy  
20 in favor of permitting amendment. *Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir. 1999). The Ninth  
21 Circuit has made clear that Rule 15(a) is to be applied with “extreme liberality.” *Eminence Capital,  
22 LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (*per curiam*). Under Rule 15(a), courts  
23 consider various factors, including: (1) bad faith; (2) undue delay; (3) prejudice to the opposing  
24 party; (4) futility of the amendment; and (5) whether the plaintiff has previously amended the  
25 complaint. *See id.* at 1052. Not all of these factors carry equal weight and prejudice is the  
26 “touchstone.” *Id.* Absent a showing of prejudice or a strong showing of any of the remaining

<sup>1</sup> It is within a magistrate judge's authority to grant leave to amend. *Underwood v. O'Reilly Auto Enterps., LLC*, 342 F.R.D. 338, 342 n.2 (D. Nev. 2022) (collecting cases).

1 factors, there is a presumption that leave to amend should be granted. *Id.* The party opposing the  
 2 amendment bears the burden of showing why leave should be denied. *Desert Protective Council*  
 3 *v. U.S. Dept. of the Interior*, 927 F. Supp. 2d 949, 962 (S.D. Cal. 2013) (citing *Genentech, Inc. v.*  
 4 *Abbott Labs.*, 127 F.R.D. 529, 530-31 (N.D. Cal. 1989)).

5 Defendants have not met their burden in opposing the motion to amend. Indeed,  
 6 Defendants' opposition brief includes no citation to any legal authority of any kind, *see* Docket  
 7 No. 263, which can be construed as consent to the granting of the motion, *see* Local Rule 7-2(d).  
 8 This finding is, standing alone, fatal to Defendants' opposition effort.

9 Even were the Court to consider the response on its merits, it fails anyway. Defendants  
 10 first contend that amendment is untimely pursuant to the scheduling order. *See* Docket No. 263 at  
 11 1. The Court disagrees. Plaintiffs sought leave to amend in accordance with the scheduling order.  
 12 *See* Docket No. 159; *see also* Docket No. 111. United States District Judge Andrew P. Gordon  
 13 thereafter provided Plaintiffs with the option of withdrawing that motion to amend and renewing  
 14 it. Docket No. 209 at 3 ("if the plaintiffs want to withdraw the pending motion to amend and file  
 15 a new motion to amend in light of this order, they also have leave to do that"). Plaintiffs then  
 16 withdrew the prior motion to amend, Docket No. 217, and promptly filed a renew motion to amend,  
 17 Docket No. 248. The renewed motion to amend is not untimely.

18 The other arguments referenced by Defendants appear to go to an anticipated response to  
 19 the amended complaint after it is filed or, perhaps, an argument that allowing amendment would  
 20 be futile. *See* Docket No. 263 at 2-3.<sup>2</sup> Although futility can be a ground to deny leave to amend,  
 21 *Novak v. United States*, 795 F.3d 1012, 1020 (9th Cir. 2015), courts do not generally deny leave  
 22 to amend on that ground, *Underwood*, 342 F.R.D. at 346-47. Courts usually resolve challenges to  
 23 the merits of a proposed amended complaint through separate motion practice (like a motion to  
 24 dismiss). *See* *Netbula, LLC v. Distinct Corp.*, 212 F.R.D. 534, 539 (N.D. Cal. 2003); *see also* *in re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 536 F. Supp. 2d 1129, 1135-36

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28 <sup>2</sup> These arguments are not well-developed, which is also another stand-alone ground for  
 rejecting them. *See, e.g., Kor Media Grp., LLC v. Green*, 294 F.R.D. 579, 582 n.3 (D. Nev. 2013).

1 (N.D. Cal. 2008). The Court has not been given sufficient reason to chart a different course in this  
2 case.

3 Accordingly, the motion to amend is **GRANTED**. Plaintiffs must promptly file the  
4 amended complaint on the docket and serve it. *See* Local Rule 15-1(b).

5 IT IS SO ORDERED.

6 Dated: June 12, 2024

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8 Nancy J. Koppe  
9 United States Magistrate Judge

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